

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Expanding the Economic and Innovation	)	Docket No. 12-268
Opportunities of Spectrum Through	)	
Incentive Auctions	)	

REPLY COMMENTS OF  
INTERNATIONAL BROADCASTING NETWORK

International Broadcasting Network (IBN) hereby submits its reply comments in response to the above-captioned Notice of Proposed Rulemaking.

I

Subject to the exceptions and exclusions noted in Paragraph V hereof, IBN concurs with the comments listed below:

A. *Comments of the School Board of Miami-Dade County, Florida (MDCPS)*. In particular, IBN wholeheartedly agrees with MDCPS that:

- (1) The proposed spectrum auction and repacking processes are an assault on the First Amendment rights of broadcasters and the public.
- (2) The proposals violate Section 307(b) of the Communications Act.
- (3) The resulting loss of television service is *prima facie* inconsistent with the

public interest.

(4) The proposals are rigged in favor of large foreign-financed wireless interests.

(5) The proposals will destroy domestic jobs, harm the national economy, reduce competition and decrease diversity in television broadcasting.

(6) The proposals will eliminate valuable service to the public.

(7) The proposals are particularly harmful to non-commercial educational broadcasters (and indeed all nonprofit broadcasters).

(8) The proposals are based on the false premise that wireless broadband providers are experiencing service problems that can be resolved only by expanding wireless spectrum allocations.

(9) This proceeding should not go forward.

B. *Comments of SpectrumEvolution, Inc. (SEI)*, in part. In particular, IBN wholeheartedly agrees with SEI that:

(1) The Commission's proposals in this proceeding violate Section 6004(b)(5) of the Spectrum Act, which was included for the purpose of ensuring that the spectrum usage rights of low power television stations would not be altered.

(2) Low power television stations are secondary *only* to full power television stations.

(3) Section 316 of the Communications Act gives all television stations, including full power and low power alike, the right to a hearing before its license can be modified without its consent, and if the Commission initiates the proceeding the

Commission has the burden of proof.

(4) The Commission's proposals are inconsistent with Sections 257(a) and 257(b) of the Communications Act in that they would result in less diversity of media voices, reduce competition, restrict technological advancement, destroy small businesses and be contrary to the public interest.

## II

It should be noted that it is misleading and disingenuous to describe the processes proposed by the Commission in this proceeding as "repacking" as though television stations could be repacked like a truckload of watermelons or a box of canned goods. Each television station is designed and built to unique specifications appropriate for that station's frequency, power level, coverage area, population to be served, terrain, tower site, tower strength, tower load, interference issues and other factors. Moving a station to a different channel ordinarily requires rebuilding the entire transmission system, and it often requires that a new tower and transmitter building be constructed. These things are not easily accomplished. Various federal, state and local agencies are involved, and getting their approvals can be difficult and time-consuming. For nonprofit entities that are exempt under Section 501 of the Internal Revenue Code, the problems are greatly compounded and may lead to huge penalties and loss of exempt status. If the station is within a certain distance of a border with Canada or Mexico, obtaining the foreign government's approval is necessary. In the case of Mexico, such approval may never come without the payment of illegal bribes. These and other



technical, legal and economic issues will be very difficult and often impossible to overcome.

### III

The Commission must not lose sight of the fact that going forward with its proposals will have a devastating impact on the economy, on jobs and on the lives of countless station owners, employees, viewers and suppliers. In many cases, station owners have invested millions of dollars in building and operating their stations. Constructing or buying a low power television station can easily run to a million dollars or more. In many cases, the owner has invested his or her life's savings in the station and then borrowed much more from a bank or other financial institution. The hopes and dreams of a lifetime will be destroyed for many owners whose spectrum is confiscated without due process and just compensation. When a station's spectrum is taken, every other asset of the station loses its value. Apart from a valid license, virtually all the station's equipment suddenly becomes worthless. The FCC should recognize the immense human tragedy that implementation of its proposals will cause.

### IV

It seems that the Commission has embarked upon a predetermined plan rather than to independently exercise its expertise in a fair, objective and impartial manner. High-ranking officials of the Commission have acted as though they were paid lobbyists for the wireless industry, proclaiming a wireless spectrum crisis without a shred of evidence to support their claims. That the Commission would so obviously serve the special interests of the

huge multi-national corporations that dominate the wireless industry, rather than serve the public interest, is shocking and unconscionable.

#### V

To the extent that either of the comments listed in Paragraph I above may include alternative suggestions or recommendations for anything less than the full protection of *all* television licenses and permits regardless of classification, IBN vigorously dissents. Any such suggestion or recommendation is contrary to IBN's position, and nothing herein should be construed as supporting or condoning any proposal that fails to protect all rights of *all* television stations, whether full power or low power.

#### VI

IBN's original comments, as filed January 25, 2013, are attached hereto and made a part hereof for all purposes.

For each of the foregoing reasons and the reasons stated in its original comments, IBN reiterates its original request that the Commission reconsider its proposals in this proceeding, that it recognize that implementation of those proposals is not only unnecessary and counterproductive but also contrary to the public interest and impossible

to fulfill, that it promptly close this proceeding and that it abandon its plans to take television spectrum from broadcasters.

Respectfully submitted,

INTERNATIONAL BROADCASTING NETWORK

By its President

A handwritten signature in cursive script that reads "Paul J. Broyles". The signature is written in dark ink and is positioned above the printed name and address.

Paul J. Broyles  
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March 12, 2013

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Expanding the Economic and Innovation	)	Docket No. 12-268
Opportunities of Spectrum Through	)	
Incentive Auctions	)	

COMMENTS OF  
INTERNATIONAL BROADCASTING NETWORK

International Broadcasting Network (IBN) hereby submits its comments in response to the above-captioned Notice of Proposed Rulemaking. IBN urges that the Commission reconsider implementing its incentive auction.

I

The incentive auction is unnecessary and would be counterproductive for each of the following reasons:

A. The claimed shortage of wireless spectrum has not been proven and, in fact, does not exist. The wireless industry is sitting on unused spectrum and simply wants to warehouse as much additional spectrum as possible while making inefficient use of the spectrum it already has. There have been several studies indicating that the efficiency of wireless spectrum can be increased by as much as 1,000 times through the use of modern technology. Monopolization and elimination of competition are among the reasons that a



few large wireless companies with massive lobbying budgets have been demanding that spectrum be taken from television broadcasters and reallocated for wireless use.

B. Television spectrum is not well-suited for the wireless industry's business purposes. Cell phones and other mobile devices that are typically served by wireless companies like AT&T, Verizon and T-Mobile are quite small and cannot accommodate the large antennas required for reception of television spectrum. The wireless companies and their engineers know this, and claims to the contrary are false and unsupportable.

C. Unlike the pseudo shortage of wireless spectrum, there is a real shortage of television spectrum. Many low power television stations, for example, have been unable to find available channels on which to build digital facilities. The shortage of television spectrum will become much more critical as television technology advances. As television stations increase resolution and add new features, much more spectrum will be needed. The next generation of television could require as much as 25 MHz of spectrum per channel, more than four times that of today's television system. The Commission should not impede future advances in television technology in order to accommodate the unreasonable spectrum demands of wireless companies.

## II

Under the Constitution, the spectrum of low power television stations, like that of full power television stations, must be protected. The Fifth Amendment's Takings Clause applies equally to low power stations and full power stations alike. Spectrum cannot be taken involuntarily from either without due process and just compensation. Spectrum has



value and, subject to compliance with applicable regulations and procedures, can be bought and sold just as any other property. In the modern era when applicants for television spectrum must often participate in auctions run by the Commission, old theories that licensees have no property rights are obsolete and invalid. Neither Congress nor the Commission has the power to override the Constitution or to limit the protection granted therein.

### III

That low power television stations are said to be “secondary” is of no consequence with regard to their Constitutional rights. Such stations are secondary only in the sense that they must not cause interference to full power television stations. When low power television licensees accepted secondary status, it was with the understanding that their stations were secondary only to full power television stations and that the broadcast spectrum would continue to be of sufficient size to accommodate them. By careful engineering, the risk of displacement could be eliminated. It was not within the contemplation of the station licensees, their investors, the financial institutions that financed them, their legal advisors, their consulting engineers, the Commission or any other person or entity that low power stations could be forced out of existence through an auction or any other scheme.

### IV

All estimates of net revenue to be obtained by auctioning off television spectrum are grossly inflated, and the amount to be set aside as compensation for broadcasters is far less

than actual damages will be. It is quite possible that the auction process will result in a net loss to the government. It should not be the purpose of government to engage in speculative endeavors that, at best, would yield only a paltry sum and, at worst, would significantly increase the national deficit.

## V

Television broadcasting stations, whether full power or low power, serve the public interest, inform and entertain their viewers, provide employment and are an essential part of the fabric of the communities they serve. Wireless companies, being national in scope, can never match the services provided by broadcasters. Moreover, television broadcasters offer their signals free of charge to all within their range while wireless companies offer nothing that's truly free, charging all the market will bear and typically using contracts of adhesion that bind their customers to long terms that cannot be shortened without high cancellation penalties.

## VI

It should be noted that many broadcast licensees, including IBN, are exempt nonprofit entities that are recognized as such by the Internal Revenue Service under Section 501(c)(3) of the Internal Revenue Code. The Commission's proposals would jeopardize that status, especially if such nonprofit entities were forced to share facilities with for-profit entities. The whole idea that television broadcasters could be forced to share transmission facilities and spectrum with other broadcasters is preposterous. The channel

repacking scheme defies the laws of physics, ignores international treaties, restricts competition and positively will not work.

## VII

If the Commission were to proceed with its ill-conceived plans notwithstanding the reasons it should not do so, the world's most successful and important broadcasting service would be severely crippled and could face ultimate extinction. A free and open press, including broadcasting, has long been considered to be essential to the preservation of democracy. If our nation is to survive as a beacon of freedom, liberty and hope for all the world to observe and seek to emulate, all the television spectrum must continue to be allocated exclusively for television and not be auctioned off for any other purpose. The very future of our nation is at stake, and that future must not be placed at risk by any short-sighted attempt to bring a relatively small amount of revenue into the Treasury in order to facilitate the spending spree that our political leaders have been engaged in for much too long.

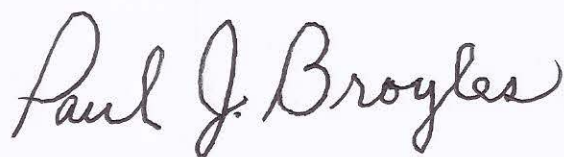
For each of the reasons stated above, International Broadcasting Network urges that the Commission reconsider its proposals in this proceeding, that it recognize that implementation of those proposals is not only unnecessary and counterproductive but also

contrary to the public interest and impossible to fulfill, that it promptly close this proceeding and that it abandon its plans to take television spectrum from broadcasters.

Respectfully submitted,

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By its President

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January 25, 2013